

package in terms of weight, measure, or numerical count, provided, however, that reasonable variation shall be permitted [reads].

"Are there any suggestions?

"Mr. PRATT. I have two. These should be made out of the presence of the jury, additional suggestions.

"The COURT. I can not take that up now.

"Mr. PRATT. I thought your honor asked for suggestions.

"The COURT. As to these regulations of the department, as I charged you, these regulations have the same effect as law and are binding just the same under the regulations, rules and regulations for the enforcement of the Food and Drugs Act on which this prosecution is based. There are certain regulations that are laid down by the heads of department, by the Secretary of Agriculture and the subordinate officers, for the conduct and regulation of these prosecutions. That is the method by which the evidence may be obtained, and among the other regulations I am now reading from Regulation 3: 'A sample for examination by or under the direction and supervision of the Bureau of Chemistry shall be collected,' first, by an authorized agent of the Department of Agriculture; second, a sample of food or drug [reads].

"Then again, referring to paragraph (d): 'At the time of the collection, all marks, brands or tags' [reads].

"I read that to you, gentlemen, to explain to you why these officers, these analysts and chemists and inspectors have proceeded according to the law and to the regulations of their department in getting these samples for inspection and examination and they are entitled to that consideration and not to criticism. 'Statement of weights shall be in terms' [reads].

"I think that is sufficient to govern you in this regard in your consideration of this case.

"As to the form of your verdict, gentlemen, if you find the defendant, the Southern Cotton Oil Co., guilty, the form of your verdict will be: 'We, the jury, find the defendant, Southern Cotton Oil Co., guilty as charged in the information.' (Signed by all the jurors.) If, on the other hand, you find them guilty on some counts and not guilty on others, the form of your verdict will be accordingly, only designating on what counts you find them guilty and on what counts you find them not guilty. If, on the other hand, you find the defendant, Southern Cotton Oil Co., not guilty, your verdict will be: 'We, the jury, find the defendant not guilty.'

"You will now return in charge of the sworn officer of this court to consider your verdict.

"Mr. PRATT. There are one or two suggestions; I think, your honor, that these regulations have been modified since this offense is alleged to have been committed. There is a very substantial modification.

"The COURT. I do not think that is material.

"Mr. PRATT. I should like to have the record show that I point that out.

"The COURT. All right.

"Mr. PRATT. And also the statement in the charge in regard to the proof of interstate commerce shipments. I should like to except to that.

"The COURT. All right."

The jury then retired and after due deliberation returned a verdict of guilty on March 9, 1923. On March 17, 1923, a motion for a new trial and in arrest of judgment was heard and overruled, and the court imposed a fine of \$600 and costs.

HOWARD M. GORE, *Acting Secretary of Agriculture.*

11681. Adulteration and misbranding of cider vinegar. U. S. v. Knight Packing Co., a Corporation. Plea of guilty. Fine, \$10. (F. & D. No. 14355. I. S. No. 3506-r.)

On August 11, 1922, the United States attorney for the District of Oregon, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Knight Packing Co., a corporation, Portland, Oreg., alleging shipment by said company, in violation of the Food and Drugs Act, on or about March 28, 1920, from the State of Oregon into the State of Washington, of a quantity of cider vinegar which was adulterated and misbranded. The article was labeled in part: "Knight's Cider Vinegar Knight Packing Co. Portland, Ore."

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that it was cider vinegar diluted with water.

Adulteration of the article was alleged in the information for the reason that a substance, to wit, water, had been mixed and packed therewith so as to lower

and reduce and injuriously affect its quality and strength and had been substituted in part of cider vinegar, which the said article purported to be.

Misbranding was alleged for the reason that the statement, to wit, "Cider Vinegar," borne on the labels attached to the bottles containing the article, regarding the said article and the ingredients and substances contained therein, was false and misleading in that the said statement represented that the article consisted wholly of cider vinegar, and for the further reason that the article was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that it consisted wholly of cider vinegar, whereas, in truth and in fact, it did not so consist but did consist in part of added water.

On January 13, 1923, a plea of guilty to the information was entered on behalf of the defendant company, and the court imposed a fine of \$10.

HOWARD M. GORE, *Acting Secretary of Agriculture.*

11682. Adulteration and misbranding of oats. U. S. v. 200 Sacks of Oats. Decree of condemnation and forfeiture. Product released under bond. (F. & D. No. 16091. I. S. No. 4257-t. S. No. C-3496.)

On April 11, 1922, the United States attorney for the Eastern District of Tennessee, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying the seizure and condemnation of 200 sacks of oats, remaining in the original unbroken packages at Jellico, Tenn., alleging that the article had been shipped by Callahan & Sons, Louisville, Ky., March 25, 1922, and transported from the State of Kentucky into the State of Tennessee, and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled in part: "Average Net Weight 159 1/4 Lbs. * * * Callahan's Dixie Oats."

Adulteration of the article was alleged in the libel for the reason that wild oats, barley, corn, weed seeds, chaff, and dirt had been mixed and packed therewith so as to reduce and lower and injuriously affect its quality and strength and had been substituted in part, if not in whole, for the said article.

Misbranding was alleged for the reason that the article was an imitation of and offered for sale under the distinctive name of another article, to wit, No. 3 white oats.

On October 18, 1922, Callahan & Sons, Louisville, Ky., having appeared as claimant for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to the said claimant upon payment of the costs of the proceedings and the execution of a bond in the sum of \$300, in conformity with section 10 of the act, conditioned in part that it be relabeled "Oats and Screenings."

HOWARD M. GORE, *Acting Secretary of Agriculture.*

11683. Adulteration and misbranding of olive oil. U. S. v. George Vafier (Pan-Italian Commercial Co.). Plea of guilty. Fine, \$200. (F. & D. No. 16240. I. S. Nos. 6609-t, 6610-t, 8505-t, 12376-t.)

On September 27, 1922, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against George Vafier, trading as the Pan-Italian Commercial Co., New York, N. Y., alleging shipment by said defendant, in violation of the Food and Drugs Act, as amended, from the State of New York, in various consignments, namely, on or about April 1 and 4, 1921, respectively, into the State of Connecticut, on or about April 12, 1921, into the State of Ohio, and on or about September 23, 1921, into the State of Maryland, of quantities of alleged olive oil which was adulterated and misbranded. The article was labeled in part, variously: "Montone Brand * * * Pure Italian Olive Oil Extra Virgin * * * Net Contents One Gallon;" "Net Contents Full Gallon * * * Olio Sopraffino Qualita Superiore Olio Finissimo Cotton Seed And Olive Oil A Compound Tripolitania Brand;" "Finest Quality Table Oil * * * Termini Imerese Type Net Contents One Gallon Cotton Seed Salad Oil Slightly Flavored With Olive Oil;" "Lucca Brand Lucca Olio Sopraffino D'Olive * * * 1 Gallon Net Excellent For Table And Medicinal Use."

Analyses of samples of the article by the Bureau of Chemistry of this department showed the following results: The Montone brand oil contained approximately 44 per cent of peanut oil; examination of 14 cans showed an average volume of 0.973 gallon. The Tripolitania brand showed the presence of soya bean oil and peanut oil; examination of 3 cans showed an average volume of 0.955 gallon. The Termini Imerese Type oil consisted of peanut oil with about 5 per cent of cottonseed oil and very little, if any, olive oil; examination of 17